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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/087,628	03/01/2002	Chester Kolton	38-94	3691
7590 05/05/2004				
John J. Torrente Robin, Blecker & Daley 330 Madison Avenue New York, NY 10017		EXAMINER NGUYEN, TAI T		
		ART UNIT PAPER NUMBER		
		2632		

DATE MAILED: 05/05/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/087,628

Applicant(s)

KOLTON ET AL.

Examiner

Tai T. Nguyen

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 7-10 and 13 is/are allowed.
- 6) ☒ Claim(s) 1, 3, 5-6 and 11-12 is/are rejected.
- 7) ☒ Claim(s) 2 and 4 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1 and 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolton et al. (US 6,342,838) in view of Feibelman (US 6,433,686).

Regarding claim 1, Kolton et al. disclose an EAS marker assembly (44) comprising a housing (36) defining an interior cavity (42) and an EAS marker (30) contained therein, the housing (36) defining first and second tabs (38, 40) extending outwardly of first and second different sides of the housing (figures 5-6; col. 2, lines 38-46). Kolton et al. fail to disclose the first and second tabs being defined an aperture extending therethrough. Feibelman teaches a an anti-theft tag (10) having a first member (16) being defined first and second tabs (18, 30) extending outwardly of first and second different sides of the first member, wherein each of the first and second tabs defining an aperture (19) extending therethrough (figures 3-4; col. 13-51). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to utilize the first and second tabs, each having the aperture as taught by Feibelman in the system as disclosed by Kolton et al. for the purpose of attaching/stabilizing the housing onto a protect garment.

Regarding claim 3, Kolton et al. disclose the first and second tabs (38, 40) extend to respective free tab ends and the housing (36) defines hinge sections (38a, 40a) at ends of the first and second tabs opposite the free ends thereof (figure 5).

3. Claims 5-6 and 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kolton et al. and Feibelman as applied to claim 1 above, and further in view of Ohlhausen (US 3,756,200).

Regarding claims 5-6, Kolton et al., as modified, disclose the instant claimed invention except for: a joiner device having a shaft portion of diameter equal to or less than a diameter of the tab aperture and a locking device securable to the joiner device. Ohlhausen further teaches a tick eradiator includes a joiner (50) having a shaft portion of diameter equal to a diameter of the tab aperture and a locking device securable the joiner (figure 4, col. 2, lines 41-45). Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to use the joiner and device and the locking device as taught by Ohlhausen in the system as disclosed by Kolton et al., as modified, for the purpose of securing the EAS marker to a article to be protected in order to lock the EAS therein.

Regarding claims 11-12, refer to claims 1 and 5-6 above.

Allowable Subject Matter

4. Claims 7-10 are allowed.

5. Claims 2 and 4 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

6. Applicant's arguments with respect to claims 1, 7, 11, and 13 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tai T. Nguyen whose telephone number is (703) 308-0160. The examiner can normally be reached on Monday-Friday from 7:30am-5:00pm..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel J. Wu can be reached on (703) 308-6730. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

April 29, 2004
Tai T. Nguyen
Examiner
Art Unit 2632


DANIEL J. WU
PRIMARY EXAMINER 4/30/04